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November 25, 2014

VIA EMAIL

Mr. Harold Henderson
President, NFL Player Care Foundation
P.O. Box 4746
New York, NY 10017

Re: Adrian Peterson Article 46 Appeal Hearing

Dear Mr. Henderson:

I write on behalf of the National Football League Players Association (“NFLPA”) and Adrian Peterson to formally move for your recusal as arbitrator of Mr. Peterson’s Article 46 appeal. Neither you, nor anyone else with your inextricable ties to the League Office and Commissioner Goodell, could lawfully preside over Mr. Peterson’s appeal due to evident partiality. As a result, we request that you recuse yourself so that Mr. Peterson may be afforded a fundamentally fair hearing, as required by the Labor Management Relations and Federal Arbitration Acts.

The inescapable fact of your evident partiality stems from your personal and continuing professional connection to the NFL and Commissioner Goodell, who, by his actions, has publicly committed himself to an unlawful application of discipline in this matter, in an attempt to reduce the intense public pressure that has been placed on the Commissioner and the League as a result of its long-standing Policy and practices concerning discipline for acts of domestic violence.

Specifically, since the two-game suspension imposed on Ray Rice in July 2014 for an act of domestic violence against his then-fiancée, the NFL has been the target of unprecedented, withering criticism for its disciplinary treatment of incidents of player domestic violence. The unrelenting and intense public furor has led a number of interest groups, media commentators and members of Congress to call for Commissioner Goodell to resign due to his inadequate handling of this issue.

Reacting to this unprecedented public criticism directed at the Commissioner and the NFL, the Commissioner has made a number of public comments committing to do “whatever is necessary” with respect to punishing domestic violence to quell the public storm—a posture that is totally inappropriate for the arbitrator of disciplinary appeals. *Compare* Aug. 28 Ltr. from Commissioner to Owners at 1



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(“We allowed our standards to fall below where they should be”) *with* Sept. 19, 2014 Goodell Opening Statement to Press Conf. (“ . . . [N]ow I will get it right and do whatever is necessary to accomplish that.”). As part of this public commitment to “get it right,” the Commissioner renounced the very NFL disciplinary Policy he was required to apply—*i.e.*, the Policy in place at the time Mr. Peterson committed the conduct in question—and instead imposed the NFL’s “new,” August 28, 2014 domestic violence Policy to Mr. Peterson on a retroactive basis.

Moreover, the Commissioner did so in apparent retaliation for Mr. Peterson’s exercise of his rights as a union member in refusing to attend a “new” disciplinary hearing, involving various outside consultants, that has never been part of the collectively bargained Article 46 process. In fact, before Mr. Peterson exercised his right not to attend such an unprecedented “hearing,” NFL Executive Vice President of Football Operations Troy Vincent told Mr. Peterson that the revised August 28 Policy could *not* be applied to him; rather, Mr. Peterson was subject to discipline under the prior iteration of the Policy. Similarly, during the Ray Rice arbitration, the NFL—through Commissioner Goodell’s testimony and counsel’s argument—made much of the fact that the Commissioner did *not* apply the August 28 Policy retroactively to Mr. Rice’s conduct. *See, e.g., Rice Hr’g Tr.* 101:7-13 (Goodell) (“Q. Did you give any consideration to changing Mr. Rice’s discipline at [the] time [that you issued the August 28 policy]? A. I did not. Q. And why not? A. Because I gave him the discipline, I felt it was appropriate. The policy was the policy that I was changing *going forward*.”) (emphasis added).

All of these NFL statements and actions with respect to Mr. Peterson’s discipline have occurred within the broader context of the public campaign in which the Commissioner has vowed to issue much harsher discipline, and impose new procedures, for domestic violence offenses. The problem with the Commissioner’s zeal here is that—as he and Mr. Vincent have acknowledged—such new disciplinary policies and procedures cannot apply retroactively to Mr. Peterson’s conduct prior to August 28. The Commissioner’s determination to nonetheless apply the revised Policy to Mr. Peterson is clearly infected with evident partiality arising out of the NFL’s apparent need to try to appease the public uproar. *See, e.g.,* Sept. 19 Goodell Opening Statement to Press Conf. (“There will be changes to our personal conduct policy. I know this will happen because we will make it happen. Nothing is off the table.”). No one closely tied to the NFL, such as yourself, can serve as arbitrator in this hearing without running afoul of the evident partiality standard.

Because of this unique set of facts, unforeseeable when Article 46 was last agreed to in 2011, no individual employed by, or affiliated with, the NFL can arbitrate Mr. Peterson’s appeal with the impartiality required by law. With all due respect, this applies to someone in your position, who spent 16 years as the NFL’s Executive Vice President for Labor Relations and Chairman of the NFLMC’s Executive Committee, subsequently became Executive Vice President for Player Development, and currently serves as President of the NFL Player Care Foundation. We further understand that you are still

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employed part-time by the NFL and thus report to the Commissioner, that the NFL controls your pension, and that the NFL's financial disclosures indicate that the League has paid you more than \$2.5 million over the three-year span beginning in 2009. We do not know the details of your most recent payments by the NFL, but we believe that you must disclose those as well, as they are likely to provide further support for the conclusion that you cannot satisfy the evident partiality test to serve as the arbitrator in this case.

We also note that your evident partiality is more clearly on display here because of the fact that, unlike in a typical Article 46 appeal, you will be called upon to adjudicate issues involving the credibility of both Commissioner Goodell and Mr. Vincent. This circumstance gives you a further personal connection to, and stake in, the outcome of Mr. Peterson's appeal, which is another reason to disqualify you from serving as arbitrator in this matter. See Elkouri & Elkouri, *How Arbitration Works* 2-33 (Kenneth May et al. eds., 7th ed. 2012) ("Obviously . . . disqualification is appropriate when the arbitrator has a personal stake in the outcome of the arbitration."); *id.* (citing *Pitta v. Hotel Ass'n of NYC*, 806 F.2d 419, 423-24 (2d Cir. 1986) ("It is axiomatic that a neutral decision-maker may not decide disputes in which he or she has a personal stake. . . .")).

Finally, we note that as Chair of the NFLMC for 16 years, you had direct involvement in shaping the disciplinary policies which led to the unprecedented criticism that will necessarily be part of Mr. Peterson's appeal. How those issues are treated in this hearing will reflect on your professional reputation as well, which thus establishes yet another debilitating personal stake possessed by you in the issues on appeal, in further violation of the evident partiality test.

For all of the foregoing reasons, the NFLPA and Mr. Peterson respectfully request that you recuse yourself from arbitrating this matter.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jeff Kessler /JA". The signature is fluid and cursive, with a large initial "J" and a stylized "K".

Jeffrey L. Kessler

cc: DeMaurice Smith
Tom DePaso
David Greenspan
Adolpho Birch
Adrian Peterson
Ben Dogra